

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

EDWARD E. DAY, III,

Defendant.

CASE NO. 8:06CR132

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 25). See "Order on Sentencing Schedule," ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The plea agreement states that the government will not seek an enhancement pursuant to U.S.S.G. § 2K2.1(b). The Defendant objects to ¶ 15 of the PSR, which includes a 2-level enhancement pursuant to U.S.S.G. § 2K2.1(b)(4). The Court's tentative finding is that, absent unusual circumstances, the plea agreement should be upheld.

IT IS ORDERED:

1. The Court's tentative findings are that the Defendant's objections (Filing No. 25) to the PSR are granted;
2. The parties are notified that my tentative findings are that the PSR is correct in all other respects;
3. If **any** party wishes to challenge these tentative findings, the party shall file, as soon as possible but in any event before sentencing, and serve upon opposing counsel and the court a motion challenging these tentative findings, supported by (a) such

evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this order, my tentative findings may become final;

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 11th day of October, 2006.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge